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MICHAEL RODAK, JR., CLERK

SUPPLEMENTAL APPENDIX OF THE NATIONAL LABOR RELATIONS BOARD

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1313

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, COMMUNICATION EQUIPMENT AND SYSTEMS DIVISION,

Petitioner,

—v.—

LOCAL 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 25, 1974
CERTIORARI GRANTED MAY 13, 1974

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1312

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Petitioner,

—v.—

LOCAL 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.

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* The Board is filing a separate appendix because, although a party, it was not afforded an opportunity to designate material for inclusion in petitioner's appendix.

EXCERPTS FROM THE HEARING BEFORE THE NATIONAL LABOR RELATIONS BOARD, THIRTEENTH REGION, IN CASE NO. 13-CD-209:

[Caption Omitted]

[3] PROCEEDINGS

HEARING OFFICER: SCHULSON: The hearing will be in order.

This is a formal hearing in the matter of Local Union No. 134, International Brotherhood of Electrical Workers, AFL-CIO and International Telephone and Telegraph Corporation, Communications Equipment and Systems Division and Communications Workers of America, AFL-CIO, Case No. 13-CD-209.

The Hearing Officer for the National Labor Relations Board is Stephen S. Schulson.

Will Counsel now state their appearances for the record.

For the Employer?

MR. O'BRIEN: Seyfarth, Shaw, Fairweather and Geraldson by John D. O'Brien and Peter J. Hurtgen, 111 West Jackson Boulevard, Chicago, Illinois.

HEARING OFFICER: For the IBEW?

MR. FITZGERALD: For Local 134, IBEW, Robert E. Fitzgerald, 53 West Jackson, Chicago, Illinois, 60604.

HEARING OFFICER: For the Communication Workers of America?

MR. SCHUR: The law firm of Katz and Friedman by Jerome Schur, 7 South Dearborn Street, Chicago, Illinois, 60603.

* * * *

[5] HEARING OFFICER: I wish to inform all parties that the official Reporter makes the only official transcript of these proceedings and all citations and briefs and arguments must refer to the official record.

After the close of the hearing if the parties wish to make corrections in the record, all such proposed corrections by way of stipulation or motion should be for-

warded to the Board instead of to the Hearing Officer as the Hearing Officer—in as much as the Hearing Officer has no power to make any rulings in connection with this case after the hearing is closed.

I wish to state that all matter is recorded by the official Reporter while the hearing is in session and if the parties wish to make off the record remarks, they should be made to the Hearing Officer and not the Reporter.

Reasons in support of motions should be concise and specific and made on appropriate request and should be made on the entire line of questioning. Exceptions should be allowed to adverse rulings.

Copies of pleadings submitted during the course of the hearing are to be filed with the Hearing Officer.

[6] This is a nonadversary proceeding. The purpose of the Hearing Officer is to be sure the record contains as full and concise a statement of the pertinent facts as is necessary for the determination of the issues by the Board.

Off the record.

(Discussion held off the record.)

HEARING OFFICER: On the record.

In an off the record discussion, the parties have agreed to the following stipulation:

International Telephone and Telegraph Corporation, Communications Equipment and Systems Division, is engaged in the distribution and installation of electronic telephone equipment and related products with facilities in Connecticut, Illinois, Tennessee, New York, New Jersey, California, Florida, and other states.

The Illinois facility mentioned above is a sales office.

During the past calendar year International Telephone and Telegraph Corporation, Communications Equipment and Systems Division, in the normal course and conduct of its business operations has received goods and materials valued in excess of $100,000 which were shipped to its facilities directly from across state lines.

These goods and materials were manufactured by other divisions of International Telephone and Telegraph Cor-

poration, Communications Equipment and Systems Division.

[7] International Telephone and Telegraph Corporation, Communications Equipment and Systems Division, is now and at all times material herein been an employer engaged in commerce within 2(6), (7) and (8) (b) of the National Labor Relations Act.

MR. O'BRIEN: The Employer stipulates.

MR. FITZGERALD: We will stipulate.

MR. SCHUR: The Communication Workers so stipulate.

HEARING OFFICER: The stipulation is received.

Off the record.

(Discussion held off the record.)

HEARING OFFICER: On the record.

I propose the following stipulation:

Local Union No. 134, International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.

Will the parties stipulate to this?

MR. O'BRIEN: The Employer so stipulates.

MR. FITZGERALD: So stipulate.

MR. SCHUR: So stipulated.

HEARING OFFICER: Stipulation is received.

I propose the following stipulation:

The Communications Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.

• • • •

[DIRECT EXAMINATION OF MARGARETA SCHWELLENBACH]

[17] HEARING OFFICER: Go ahead.

Q (By Mr. O'Brien) Miss Schwellenbach, or Mrs. Schwellenbach, do you know whether ITT was licensed under the ordinance reflected in IBEW Exhibit No. 2 for

the performance of the installations of telephone equipment at the Elk Grove Village Administration Hall?

A Yes, they were.

MR. FITZGERALD: I am sorry, could I have the answer read back?

HEARING OFFICER: Yes, they were is the answer.

MR. FITZGERALD: The answer is yes?

THE WITNESS: Wait a minute.

MR. FITZGERALD: I think we have a problem. We don't have response to the subpoena.

MR. O'BRIEN: Let her finish the answer.

THE WITNESS: No.

MR. O'BRIEN: They were not licensed.

That shows how the village interprets the ordinance. We were not licensed, therefore it is apparent the villige did not deem the contract as with the village itself.

MR. FITZGERALD: I am going to object from the testimony from the Company Counsel. He's not telling us what the village people . . .

HEARING OFFICER: He's arguing on the admission of this document.

[18] Let me ask you a question, Mrs. Schwellenbach.

THE WITNESS: Schwellenbach.

HEARING OFFICER: Where did you obtain this document?

THE WITNESS: That comes . . .

MR. FITZGERALD: I supplied it for her, Mr. Hearing Officer. It's a copy of the village ordinance that is available for one dollar at the village hall.

HEARING OFFICER: How do you know it's a copy of the village ordinance?

THE WITNESS: I have seen a copy of the names and everything are correct. It's not certified.

HEARING OFFICER: I will receive this.

MR. SCHUR: Mr. Hearing Officer, this is a document handed to her by Counsel. There is no indication she read anything other than the cover.

I think we ought to ask her that much.

HEARING OFFICER: She testified she knows this is the village ordinance.

MR. O'BRIEN: She also testified in fact that the village with whom ITT had a contract did not deem ITT to be covered by that.

MR. FITZGERALD: Objection, not her testimony.

MR. O'BRIEN: She said no, they were not licensed under that ordinance.

HEARING OFFICER: I am not sure at this time how much [19] relevance this has.

This is a non-adversary proceeding.

I will receive IBEW Exhibit No. 2.

(The document heretofore marked IBEW Exhibit No. 2, for identification, was received in evidence.)

* * * *

[57]

[DIRECT EXAMINATION OF J. D. FOSTER]

[BY MR. HURTGEN]

Q Have communications technicians of CESD installed equipment the same as or similar to the equipment that was installed at Elk Grove Village at other locations?

A Yes, they have.

Q Could I have this identified or marked for identification, please, as Employer's Exhibit 1?

(Whereupon, Employer's Exhibit No. 1 was marked for identification.)

HEARING OFFICER: You said the CESD employees installed the same equipment at other locations as they installed at Elk Grove Village.

Why don't you read back that question?

(Record read.)

HEARING OFFICER: Now, you meant by that the equipment [58] that they installed at Elk Grove Village. . .

THE WITNESS: The equipment installed at Elk Grove Village is the same or similar to the equipment that has been installed at other locations.

The employees are the same employees or same type of employees that installed at other locations.

HEARING OFFICER: All right.

* * * *

[BY MR. HURTGEN]

[64] Q Do you know a man by the name of VanWattering?

A I do.

Q Is he in the room presently?

MR. FITZGERALD: I object to any further testimony in this area because we will not—we will stipulate that Local 134 claims this work that is in question.

I don't think any further—I think any pursuit in light of that is unnecessary in light of the stipulation.

MR. HURTGEN: I am happy for the stipulation, Mr. Hearing Officer. I think the testimony will go beyond that point to items and elements which are necessary for 8(b)(4)(d), that is the threat made beyond the claim.

HEARING OFFICER: You stipulate to engaging in conduct in 8(b)(4)(i)(ii)(D)?

[65] MR. FITZGERALD: No, because I don't think that necessary for the 8(10)(k) hearing to be held.

Now, the violation of the statutes, the Regional Director therefore the Board apparently felt there is reasonable cause to believe that this violation took place because it proceeded into Federal District Court.

I see no. . .

HEARING OFFICER: The Board hasn't ruled there is reasonable cause. I will allow the testimony.

MR. FITZGERALD: My point is you don't need the Board to rule there is reasonable cause to believe it and that has been cited by the Regional Director before, you have the authority for a 10(k) hearing.

I think that is what the Court of Appeals pointed out the Board misinterpreted its function in the 10(k) hearing. It's not intended for the purpose of litigating 8(a)(4)(b) if there's in fact a jurisdictional dispute and we admit there is.

HEARING OFFICER: Under Board Law I know it's proper to have testimony on 8(b) (4) (i) (ii) (d).

MR. FITZGERALD: I object.

HEARING OFFICER: I will read that Court of Appeals decision during the break.

* * * *

[BY MR. HURTGEN]

[80] Q Which job are you referring to?

A Howard Johnsons.

MR. FITZGERALD: Mr. Hearing Officer. . .

THE WITNESS: Motel.

MR. FITZGERALD: Let me point out the reason I have to object again is we are litigating here apparently an alleged 8(b) (4) (d) violation that took place in New York.

MR. HURTGEN: We are not, your Honor.

MR. FITZGERALD: I may just finish—I have been precluded previously from going into events concerning the execution of what we contend is an invalid contract.

Now we are going into another alleged violation of the statute again outside the 10(b) period which has no relevancy to this hearing.

HEARING OFFICER: As I said before I am allowing this testimony in as background for some sort of agreement that was eventually entered into which I consider relevant in this proceeding.

Continue your questioning.

* * * *

[BY MR. HURTGEN]

[86] Q Now, were there any other incidents of a dispute between CESD and any local of the International Brotherhood of Electrical Workers who would perform the work of installing and maintaining the equipment?

MR. FITZGERALD: Mr. Hearing Officer. . .

MR. HURTGEN: That were concerned in this hearing.

MR. FITZGERALD: Mr. Hearing Officer, I am now going to object.

We have apparently left the Local 3 incident. I move all the testimony be stricken because it started out it was an unfair labor practice charge and supposedly a settlement agreement which this witness was not a party to, strictly hearsay on the terms of the settlement.

We have a supposed later affirmation of agreement and again no testimony relating to the unfair labor practice [87] concerning possibly at best a recognition by this Employer that Local 3 is entitled to the cable pulling in New York City.

I submit it should be stricken and is of no value to substantiate the alleged unfair labor practice charges were withdrawn pursuant to the agreement of June 10th —the witness was not there.

HEARING OFFICER: I agree the testimony to the agreement is completely hearsay, but in these proceedings it—and it may very well be worthless, but these proceedings, the technical rules of evidence do not apply. The testimony is already in so I will not strike it.

* * * *

[106] MR. FITZGERALD: Well, Mr. Hearing Officer, I think we have now the exact problem or question which I pose to you that is that company asking and the CWA as I listen to their statement is in effect asking that this hearing be conducted on a nationwide basis for the resolution of the dispute and I am saying to you that if that is the case, then the Board must necessarily allow the IBEW to be represented.

I agree that we are not talking about Elk Grove Village when we are talking about the jurisdictional award to settle this case. It will in effect be Local 134 jurisdiction that Cook County, that is what I am talking about, but the Company is asking for an award or Order as they put it which would be nationwide in scope because as they contend they have had trouble coast to coast.

Well, obviously if you consider New York and Los Angeles coast to coast I have to—they have had it.

I think it's improper for us, that is Local 134, to put in—to be put in the position of having to defend and to go into proof presumably of what took place, what is the work practice in New York or in Los Angeles when that

is not what this jurisdictional dispute was noticed up to concern itself with.

Now, if we are going to go nationwide, then I make—I am back to my original position. I think there has to be some determination by you as Hearing Officer on the scope of the [107] hearing and by the Board ultimately on the scope of its Order.

If you don't make a decision in that regard, we are going to end up with the Company arguing nationwide, 134 for its jurisdiction and I assume CWA nationwide.

Then we may get if from the Board an Order or decision on jurisdiction which will be nationwide in scope without the proper parties, namely the IBEW through its own counsel being present.

I think that would be a severe lack of due process. I think we are further questioning this whole nature of the hearing we are having here today.

HEARING OFFICER: Well, the scope of the determination by the Board is something that will have to be argued in brief.

During this proceeding I am going to allow all evidence that is relevant, has been considered relevant in Board decisions in which the Board makes a determinatino of to whom the disputed work should be assigned and if you feel that any evidence that is being presented as I said before is irrelevant, then I will rule on your objection at that time.

If you are proposing that we adjourn the hearing and joint the International or other locals of the IBEW as parties at this time, I will deny the motion.

• • • •

[DIRECT EXAMINATION OF LESTER FULTON]

[BY MR. O'BRIEN]

[180] Q Now, this triline telephone could a central office equipmentman from Bell install that telephone?

A If he had the related PBX equipment experience he could take the prints and figure it out.

HEARING OFFICER: Let me ask a question.

You use the term "PBX" and "PABX" interchangeably?

THE WITNESS: Yes.

The difference is one is a private branch exchange might be a manual automatic system and it covers all private exchanges.

The "A" stands for automatic which indicates automatic features of the equipment.

HEARING OFFICER: Which one is involved in the Elk Grove project?

THE WITNESS: This is a EPABX.

Electronic Private Automatic Branch Exchange.

• • • •

[BY MR. O'BRIEN]

[198] Q They were electricians?

A Yes, sir.

Q Did your communications technicians complete the job?

MR. FITZGERALD: Excuse me, Mr. Hearing Officer. If that is all we are going to get on the conversation with the foreman Jack, I move it be stricken because there is no way the connection made between the fellow Jack who is identified as a foreman and Local 134 and anything that this witness testified as to Jacks relating about employees is strictly hearsay.

MR. O'BRIEN: It goes to the point of reasonable cause to believe that there's been a violation by this labor organization of Mr. Fitzgerald's of a violation of 8(b)(4)(D) and it's relevant in that regard.

MR. FITZGERALD: Well, if it . . .

MR. O'BRIEN: It corroborates—may I finish?

MR. FITZGERALD: Sure.

MR. O'BRIEN: It corroborates what Mr. Fulton said with respect to his observations of people walking off the job.

HEARING OFFICER: Mr. Fitzgerald?

MR. FITZGERALD: You finished?

MR. O'BRIEN: I am finished.

[199] MR. FITZGERALD: If the Board as Mr. O'Brien has indicated is going to make some finding on an unfair labor practice based on the testimony here, it should be proper testimony and I am submitting that this hearsay type testimony is not proper for the Board to use.

Now, you may, as the Hearing Officer pointed out, in the 10(K) aspect for jurisdictional purposes, we don't follow strict rules of evidence, but in the unfair labor aspect, I submit we should not allow in hearsay testimony for the unfair labor practice aspect.

MR. O'BRIEN: Well, the Board . . .

HEARING OFFICER: I don't need any more discussion on this.

It's hearsay—I agree with that.

I will let it in for what it's worth.

• • • •

[CROSS EXAMINATION OF LESTER FULTON]

[BY MR. FITZGERALD]

[210] Q Now, do you have—you personally or ITT have these blue prints and specifications?

A They are available, yes, I have them in Elk Grove Village.

Q To your knowledge they are now out at Elk Grove Village?

A They are now at Elk Grove Village.

Q Are they under your custody or ITT's custody out there?

A Yes, sir.

Q How soon would you be able to bring those in if they are [211] subpoenaed?

MR. O'BRIEN: I object.

These documents were never subpoenaed and I don't think it's a fair question for the witness as to how soon he can bring them in.

The determination of whether they will be brought in will be made by someone other than the witness.

MR. FITZGERALD: Mr. Hearing Officer, I'd—I am asking for a subpoena from you in order to subpoena the document.

MR. O'BRIEN: I'd like the record to reflect we have, with the exception of the items specified, complied with the other items of the subpoena and these documents were not subpoenaed and we think it's a rather late date for the IBEW at this time to be engaged in a fishing expedition with documents.

This hearing has been pending for many weeks and now suddenly they are asking for documents. Had we known they had wanted the documents, perhaps we'd had them here in the hearing room ready to go.

HEARING OFFICER: You are asking for a subpoena form?

MR. FITZGERALD: Yes.

If I may address myself to the point?

I think we had assumed the Company would have presented the documentary evidence. Apparently they chose not to for whatever reasons. I think it is essential to the Board to [212] get the documents or copies of them.

HEARING OFFICER: I will supply you with a subpoena form and you can serve it if you wish.

MR. FITZGERALD: Why don't I continue the questioning. Then when we are finished, subpoena them.

HEARING OFFICER: All right.

* * * *

[228] MR. FITZGERALD: Well, if I comment on the last.

HEARING OFFICER: There is no need to comment. Are you going to answer the question or are you . . .

THE WITNESS: I do not wish to divulge the man's name.

MR. FITZGERALD: Well, I move that all this testimony that was elicited on so-called recruiting be stricken because again we have not only a very speculative type of testimony, but we have a direct refusal to testify.

HEARING OFFICER: I will not strike the testimony, but the record will show that the witness refused

to give you the name and therefore you are certainly disadvantaged in trying to check the accuracy of what he said, but we will let the testimony stand for what it's worth.

MR. FITZGERALD: Well, I think, Mr. Hearing Officer, that that is exactly—you hit it by saying for what it's worth.

It's not worth anything if we are unable to verify the accuracy of this testimony and we cannot cause for all we know if they have talked to someone, this individual may have [229] already said I don't want to work for you and so we have no way of verifying this and it's just not worth anything.

HEARING OFFICER: You can make your argument in brief on what this is worth.

I am not striking this testimony.

MR. FITZGERALD: All right.

* * * *

[230] RECROSS EXAMINATION

Q (By Mr. Schur) As I understand it, Mr. Fulton, what you are trying to do is hire one man that would form a nucleus of a possibly expanding if economy needs so require?

A Yes, sir, his requirement must be I'd promote him into a management job at the earliest possible date in order that he can recruit his own crew.

Q Thank you.

No further questions.

HEARING OFFICER: Mr. Fulton, in the description in the Formal Papers of the work in dispute there is mention of accepting telephone servicing, the police and fire departments.

Now, who installed or who installed these telephones when were they installed?

THE WITNESS: The police and fire emergency telephones?

HEARING OFFICER: I believe that is what this refers to.

THE WITNESS: They were completed—I couldn't give you [231] an exact date, but around the 18th of December. That was when they moved from the old police and fire department down to the new police.

The fire department moved down there on the 15th—around the 15th of December which indicated their—most of their telephone stuff was in, but they also had radio which they used a lot until they—they talked about using the radio very much in place of telephone till they were completed.

HEARING OFFICER: Who installed this equipment?

THE WITNESS: The telephone equipment was installed by Illinois Bell.

HEARING OFFICER: Any questions on this?

* * * *

[CROSS EXAMINATION OF C. D. FOSTER]

[238] Q (By Mr. Fitzgerald) Did in fact ITT employ Illinois citizens on the Elk Grove job?

MR. O'BRIEN: Objection. Irrelevant, immaterial, calling for a legal conclusion what an Illinois citizen is. Are they domiciled here.

HEARING OFFICER: Overruled.

MR. O'BRIEN: Those are legal conclusions.

HEARING OFFICER: Overruled.

MR. SCHUR: We are getting into an constitutional issue of whether the Illinois constitution is constitutional in denying the right of non-citizens to work in Illinois.

MR. O'BRIEN: Also presumes . . .

HEARING OFFICER: You can argue all these things in your [239] brief if you want to.

Do you understand the question?

* * * *

[330] Mr. O'Brien, you have a motion?

MR. O'BRIEN: Yes, with respect to the subpoena duces tecum calling for the production of documents which was served in this hearing today shortly before 2:00 p.m., and it's now 3:35, 3:34.

It's my understanding that the three subpoenaes which were served on Company representatives all call for the production of the same documents?

MR. FITZGERALD: Yes.

MR. O'BRIEN: So therefore, my remarks apply to all three.

Number One, it calls for the production of Company records including, but not limited to timecards showing the total number of hours worked by employees at ITT at the Village of Elk Grove installation.

We say that that's irrelevant and immaterial at this late date; that we have testimony in the record showing the number of hours it took employees to perform the installation; no objection was made by Mr. Fitzgerald, no timely objection when that testimony was introduced, and therefore, he has waived any objection to now claiming that the documents constitute the best evidence.

These documents also are in New York and it would be burdensome on the Employer to have to produce these documents in view of the fact that the IBEW has been on [331] notice for over two months that this hearing—of this hearing. If they wanted those documents, they could have asked for them at a more timely point in the proceedings; namely, before the hearing began.

That also applies, what I have said about Paragraph 1, to Paragraph 2.

As to Paragraph 3, which calls for the production of Company records, including shipping orders of common carriers showing all supplies and materials and equipment delivered and the date of delivery at Elk Grove Village of telephone equipment installed by the Company, that is totally and completely irrelevant and immaterial unless the IBEW is contending that there was no ITT equipment installed there at all. It seems to me that there is no issue with respect as to whether or not this kind of equipment was delivered there, unless they are seriously contending that ITT did not in fact install telephone equipment at Elk Grove Village. I say that that is totally irrelevant and Immaterial, and I think supports our claim that these subpoenaes served were

for no purpose other than to interpose delay in these proceedings.

As to Item No. 4, the technical specifications, again, irrelevant and immaterial at this point, not timely asked for, the best evidence rule is not applicable and would be nothing more than cumulative evidence.

[332] Those documents, also, I'm not sure whether at this point precisely where they are located.

And that concludes our position with respect to the subpoenaes.

* * * *

[336] MR. SCHUR: Mr. Hearing Officer, while we are not directly—we are not a direct party to this dispute, I do wish to express the position of the CWA which is that we will oppose anything which seeks to further delay this hearing.

There have been any number of delays and if obtaining records from New York is going to further delay things, then I think the position of the CWA should appear in this record.

MR. FITZGERALD: In that very point, I have heard another thing indicated that these documents could not be here, or a summary, compiled from there on Wednesday when we are scheduled to reconvene—

MR. O'BRIEN: Well, how are those documents going to be transported? Are they offering to pay to send someone to New York on an airplane and return?

And another thing, they haven't tendered witness fees to Mr. Geneen, who is in New York, for example.

MR. FITZGERALD: All right. I submit this:

We would rely on the United States—possibly it's no longer United States—but the Postal Service, and I think this is not a very difficult talk. There is one job. You asked—he asked for cost. I think it's [337] reasonable to assume that the Company's internal accounting should have a cost figure on the labor on this job already compiled, but in any event, it is not a big job. There are already documents readily available here in Elk Grove. And as to this Counsel being unprepared for the efficiency argument, I was not unprepared for it, but I think it is not improper for me to assume that

the Company would put in the best evidence; namely, records.

HEARING OFFICER: Well, if this was an adversary proceeding, I might grant the petition on the grounds of the fact that the material was subpoenaed so late in the day, but since I, as Hearing Officer, have the responsibility to see that there is a complete and full record, I will deny the petition, except that as goes to Number 3. I can't see the relevancy of Number 3. But as to 1, 2 and 4, I see the relevancy as to those items and I would, deny the petition as to Number 4—and I will deny the petition as to Number 1, 2 and 4.

* * * *

[RECROSS EXAMINATION OF
TIMOTHY J. BRESNAHAN]

[BY MR. O'BRIEN]

[457] Q There was no installation of switchboards being performed by contractors in the Association with whom Local 134 has a contract prior to that time?

A I would say in general there had been work—this would be going on—we have had contractors doing all this type of work. These men would be assigned out for general assignment.

Q No further questions.

MR. FITZGERALD: Nothing further.

HEARING OFFICER: Mr. Bresnahan, let me get something straight.

Have you received requests for employees with PBX experience?

THE WITNESS: Yes, sir, recently here definitely.

HEARING OFFICER: Now, since 1968 how many requests did you receive for employees with PBX experience?

THE WITNESS: To the best of my knowledge I can only, I can go back to two definite instances which occurred in the last few months, one with C. A. Riley and one with Henry Nangart Company.

HEARING OFFICER: When you received these requests, what did you do in attempting to fill the request?
[458] THE WITNESS: We checked with availability of the men we have registered for work. If we can't secure one from one of these available, then we seek—we have a provision in our agreement for loaning a specialized worker.

If they have a man with the necessary skills who are currently employed by another employer, we will contact the employer. If he's not using the particular skill with that employer, we will arrange a loan to the other employer.

HEARING OFFICER: When you receive the request, do you look at the files?

THE WITNESS: Yes, sir.

HEARING OFFICER: What are you looking for?

THE WITNESS: Generally looking for a man with electronics program graduate of the apprentice program or graduate of the trade school, in this case PBX skill, we look for PBX background.

HEARING OFFICER: Do you have a separate listing of PBX?

THE WITNESS: No, sir.

HEARING OFFICER: You don't look through all 6,000 files?

THE WITNESS: No.

HEARING OFFICER: Where would you go after you receive the request?

THE WITNESS: Mainly on personal knowledge, mainly the applications filed initially—if I may go back, I said no, we [459] have the application of the PBX men in one separate file since '68.

We kept a particular group—we kept a listing on them at that particular time in 1968. We made a list on those working and available.

HEARING OFFICER: By looking at the files, how do you know they are available?

THE WITNESS: Based on the application form we know most of them went back to work after the strike. We know we ended up with approximately 50—40 to 50

that never returned to Bell and they are either working or available for work at the present time.

HEARING OFFICER: How do you determine that?

THE WITNESS: By virtue of the fact they kept in contact or they are severed recently within the last couple months due to economics.

HEARING OFFICER: What—if you look at the files and find none available?

THE WITNESS: Then we go to those working and see if we can find—I'd call a superintendent of the various firms and ask if they have any men they know specifically who have done PBX work or in general if we are looking for a cable splicer and we know which firms employ them and contact the superintendent of the firm and ask them directly if they have this type of man in their employ.

[460] HEARING OFFICER: All right, anything raised by my questions?

* * * *

[463] Q Do you still require people to designate whether they are Negro, Spanish American, Oriental, American Indian or Caucasian?

MR. FITZGERALD: Objection, objection.

THE WITNESS: Not to employe . . .

HEARING OFFICER: Just a minute.

Just a minute.

I will sustain the objection.

MR. O'BRIEN: No further questions.

HEARING OFFICER: You said you had two requests, requests from two companies with employees for PBX Experience?

THE WITNESS: Yes, sir.

HEARING OFFICER: Did you assign any employees to these requests?

THE WITNESS: No, Riley called me at the time to see if I had, if we had somebody available at that particular time. We didn't assign anybody.

HEARING OFFICER: What about the other?

THE WITNESS: To the best of my knowledge Henry Newgart put on Mr. Shannon, employed him for this purpose.

HEARING OFFICER: Did you refer Shannon?

THE WITNESS: Shannon was through my office, yes, sir, to Mr. Henry Negart.

HEARING OFFICER: All right, anything raised by my [464] questions?

* * * *

[RECROSS EXAMINATION OF EDWIN F. JANIK]

[BY MR. SCHUR]

[506] Q You talking about 1971?

A No, I am talking about 1970.

I can't be talking about '71 as yet, Mr. Schur.

Q You are telling us over the calendar year 1970—strike that.

Over the calendar year 1970 approximately what percentage of your total income was derived from the interfaces?

A '70, about 15 percent.

Q And '69?

A '69, none.

Q All right, that is all.

HEARING OFFICER: Let me ask you a couple questions.

How many employees do you have now?

THE WITNESS: We have—with the union—you mean under the IBEW contract?

HEARING OFFICER: Yes.

THE WITNESS: 11 or 12.

HEARING OFFICER: Where do these employees come from—how did you obtain these employees?

THE WITNESS: Oh, local telephone company, people like ITT where they worked for the installation departments of these manufacturers of this type of equipment, telephone [507] equipment background, background in electronics where we get involved in very sophisticated electronic equipment, people that may have had schooling or education in these areas.

We are very much interested in these type people.

HEARING OFFICER: After these employees came to work for you were they given any training you are aware of?

THE WITNESS: Yes, they were given training for example in the telephone field as well as in the electronic application of our specialized communications-services.

HEARING OFFICER: And where do they receive this training?

THE WITNESS: They could receive the training either at the employers premises or at our offices.

We have a continuous training program on our premises where periodically we get the service people together to apprise them of new products, new concepts, of the products, the service field, service requirements of the product, this type of thing.

HEARING OFFICER: Now, just so the Record is clear, will you just list all the different kind of products that these employees install?

THE WITNESS: Just telephone products and associated sound systems.

HEARING OFFICER: Can you be more specific—what kind of products?

THE WITNESS: What kind of telephone products?

HEARING OFFICER: Yes.

[508] THE WITNESS: For the greater part they are ITT products.

Then, of course, the second product of more recent years, since 1968-69, we have and they still continue to install ITT products because what happened here as we upgrade an ITT system say, then this particular product that we originally sold as ITT, then become saleable again for the market in the form of a reconditioned system, but it's a basic ITT product so today the entire emphasis of installation, service still has been with ITT products.

In addition to that they also put in the Nureico system as I mentioned earlier. We also put in another intercom system as manufactured by the Delta Communication Corporation, Automatic Electric and that is about the extent of the telephone line of connections.

HEARING OFFICER: Now, the Nurelco system, is that a PBX system?

THE WITNESS: It's a PABX system, yes, sir.

HEARING OFFICER: Are you familiar with the ITT PABX system?

THE WITNESS: Yes, sir, we are.

HEARING OFFICER: What is the basis for your familiarity?

THE WITNESS: Let me qualify that.

We are familiar with the 400 series which is the EPABX.

We have attended sessions at the Oak Brook office in anticipation of becoming a part of the national organization [509] as far back as latter part of '68, latter part of '69, early part of '70 and the gentleman at that time who was interested in promoting this particular service was a gentleman by the name of Mr. Tom Hughs.

HEARING OFFICER: Now, based on this experience, will you tell us the similarities and differences between installing the EPABX systems, the 400 series, and installing the Nurelco PBX system that you testified to.

THE WITNESS: The similarities in installing the 400 series versus the Nurelco system are the same.

The similiarities in installing the two systems.

HEARING OFFICER: And then you are saying there are no differences as far as the installation?

THE WITNESS: In the installation of the two products, no.

HEARING OFFICER: Are there any differences as far as maintenance?

THE WITNESS: Yes.

HEARING OFFICER: Briefly tell us what those are.

MR. O'BRIEN: This gentleman already indicated he's not an expert.

I object to this conclusionary testimony.

HEARING OFFICER: Overruled.

Tell us what the differences are as far as the maintenance go.

[510] THE WITNESS: Basically one is a step by step unit. The other is a solid state piece of equipment.

The background of this individual has to be different.

HEARING OFFICER: Which one is solid state?

THE WITNESS: The 400 series, the ITT.

HEARING OFFICER: Any questions based on what I have brought up?

* * * *

[514] HEARING OFFICER: Before I get to that, hasn't the subpoena been received into evidence or has it?

MR. FITZGERALD: I don't believe so. I don't recall offering it.

HEARING OFFICER: I know I made—off the record.

(Discussion held off the record.)

HEARING OFFICER: Back on the record.

MR. FITZGERALD: Mr. Hearing Officer, in an off the Record comment I stated I was not going to ask for compliance on enforcement of the subpoena in this sense that Mr. Fulton's salary or wages and travel or other expenses paid because I submit that the Record reflects the Company's argument relates itself to efficiency and economy and I submit that it's not the function or obligation of Local 134 to introduce the documentary evidence to verify actual cost figures.

I submit though that—in that sense the Company has seen fit not to introduce the total Company records which would in our opinion be the best evidence that any testimony in this regard, that is economy or efficiency, to the Company [515] should not be considered by the Board so I am going to again move that that testimony be stricken and not considered by the Board.

HEARING OFFICER: All right, I am going to deny the motion to strike and I assume the Board will of course give consideration to your argument, the weight of his testimony on expenses.

MR. FITZGERALD: Okay, thank you.

* * * *

[582] HEARING OFFICER: Very good—very good. Every body rests at this point?

MR. SCHUR: Yes.

MR. FITZGERALD: Subject to my last discussion on that point.

HEARING OFFICER: Oh, which one?

MR. FITZGERALD: About the unavailability of witnesses.

HEARING OFFICER: All right.

Do any of the parties wish oral argument?

MR. O'BRIEN: No, as far as the Employer is concerned.

HEARING OFFICER: Mr. Fitzgerald?

[583] MR. FITZGERALD: I think there is enough here we should have written briefs.

* * * *

HEARING OFFICER With regard to filing, Section 10135 of the Board's procedure the parties have seven days after the close of the hearing subject to any extentions that may be granted to file briefs with the Board and request oral argument which the Board may or may not grant.

I interpret that section as empowering me to grant such extensions of time to file briefs as may be requested beyond the seven days.

Now, the question is whether you consider seven days sufficient for your purposes—if not, I shall grant an extension of time not to exceed an additional 14 days.

* * * *

[584] HEARING OFFICER: Is everyone willing to file briefs in seven days?

MR. FITZGERALD: I submit with the size of this Record that at least the two attorneys for the labor organizations feel that 21 days is a reasonable length of time to request for the filing of Briefs and I believe that we decided about April 8th.

MR. O'BRIEN: We will join in that request of Mr. Fitzgerald.

HEARING OFFICER: And Mr. Schur, will you join?

MR. SCHUR: I think Mr. Fitzgerald has accurately stated my position.

HEARING OFFICER: All right, briefs are due April 8th.

Any request for an extension of time after the close of hearing must be filed with the Board and—in Wash-

ington not later than three days before the date briefs are due and sufficient request must be written and copies must be served immediately upon each of the other parties.

Anything further at this time?

MR. O'BRIEN: Nothing further.

HEARING OFFICER: Anything further, Mr. Fitzgerald?

[585] MR. FITZGERALD: No.

HEARING OFFICER: Mr. Schur?

MR. SCHUR: No.

HEARING OFFICER: There being nothing further, the hearing is closed.

(Whereupon, the hearing in the above entitled matter was closed.)

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